



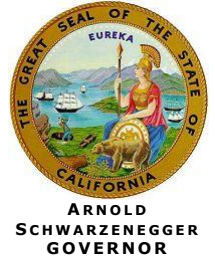
STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

www.conservation.ca.gov/smgb

smgb@conservation.ca.gov



Approval Date: January 14, 2010

CONFORMED MINUTES

THE STATE MINING AND GEOLOGY BOARD

Conducted a Regular Business Meeting on:

Thursday, November 12, 2009

9:30 A. M.

(immediately following the Policy and Legislation Committee Meeting)

Draft

Board of Supervisor's Hearing Room
County Government Center, Building A
330 Fair Lane
Placerville, CA 95667

AGENDA

For questions regarding this Agenda, please contact the SMGB office by telephone at (916) 322-1082, or by facsimile at (916) 445-0738. This Notice and associated staff reports can be accessed electronically at the SMGB's Internet web site at: <http://www.consrv.ca.gov/smgb/> (note: Agenda reports should be available electronically approximately one week prior to the scheduled meeting/hearing date).

The SMGB requests that all lengthy comments be submitted in writing in advance of the meeting date. To ensure that the SMGB has the opportunity to fully preview written material, comments should be received in the SMGB office no later than 15 days prior to the scheduled meeting date, and must indicate the Agenda Item to which it relates. For written material in excess of two pages, or that contains large maps, photos, foldouts, or other documents requiring special handling, please submit 12 copies. The SMGB will not reproduce these types of documents. Comments on Agenda Items will be accepted by electronic mail, and are subject to the same conditions set forth for other written submissions.

Individuals are responsible for presenting their own projects at the meeting.

[NOTE: Times are approximate. The chairman may alter the hearing start time or agenda item order during the meeting.]

I. Call to Order (Chairman Garner)

II. Roll Call and Declaration of a Quorum

The meeting was called to order at 9:30 A. M. by Chairman Garner, with all members present with exception to Member Wyatt and a quorum was declared.

III. Director's Report (Luther, Department of Conservation) [Information]

On behalf of Director Bridgett Luther, Chief Deputy Director Derek Chernow, reported on the following:

- A Special Session was recently concluded pertaining to a 11.1 billion dollar water bond, of which 40 million dollars would be directed to the California Farm Land Conservancy Program and Watershed Land Resources Protection Department. Contract opportunities with the California Geological Survey (CGS) are being pursued.
- Assembly Bill 1960 (Nava, Chapter 562, Statutes of 2008), which became effective January 1, 2009, expands the Department of Oil, Gas and Geothermal Resources' (DOGGR) oversight of oil and gas production facilities. AB 1960 requires that DOGGR promulgate regulations prescribing minimum maintenance standards for all oil and gas production facilities in the state. Regulations were recently submitted to the Office of Administrative Law (OAL), which will take effect in 2010.
- Several drills have been completed within the Department through the Department of Finance and/or Natural Resources Agency. These include a reduction of the Department's vehicle fleet, use of hybrid vehicles, vacancies and bond drills, among others.
- The Department will make a presentation to the SMGB in early 2010, to summarize the legislative process. The Department will work with the Executive Officer on scheduling this presentation.
- The Department will also work with the Executive Officer to kick-off discussions for updating the Surface Mining and Reclamation Act (SMARA).

- **Office of Mine Reclamation Report (O'Bryant) [Information]**

Dennis O'Bryant, Assistant Director, Office of Mine Reclamation (OMR), reported on the following activities:

- OMR's Lead Agency Review Team (LART) continues in its efforts to review certain SMARA lead agencies. The LART is reviewing the overall performance of SMARA lead agencies. LART has completed field work for seven counties, and reports for three counties. Two more counties are anticipated to be completed this year, with Alameda County being next.
- The Department was sued by the operator of the New Era Mine, located in Butte County. The judge threw the case out and awarded the Department attorney fees. The judge also indicated that the County relied on insubstantial information and the operator is required to have a permit to mine, approved reclamation plan and a financial assurance. A 15-Day Notice to the County has been issued by OMR. The mine is not currently operating, although the County is requesting that the operator winterize the site.
- OMR has noticed a rush for exemptions from SMARA, with County approval. OMR has reviewed some of these and does not agree that the exemptions being granted by certain SMARA lead agencies fit the exemption criteria. Complaints have been received from operators, and OMR will be taking enforcement actions.



- The Abandoned Mines Land Unit (AMLU) received the first National Fix A Shaft Today (FAST) Award from BLM. The AMLU program was in competition with other similar programs nationwide.
- The AMLU recently received a 4 million dollar grant from the Bureau of Land Management (BLM) for additional inventory work on abandoned mines.
- AMLU continues to work with the National Park Service and BLM for federal stimulus monies.

- **State Geologist's Report (Parrish) [Information]**

Dr. John Parrish, State Geologist and Director of the California Geological Survey, reported on the following activities:

- A joint meeting was held in conjunction with the California Emergency Management Agency (CEMA) and National Earth Prediction Council (NEPC), on November 4, 2009. Geologists and seismologists statewide met to evaluate seismic issues, earthquake swarms and precursors, among other topics. Recently re-activated after a 10 year hiatus, CGS has joint responsibilities with NEPC. CGS reviews about 435 plans per year and 70 to 80 hospital sites per year for the State Architect.
- The Strong Motion Instrumentation Program is holding its international annual seminar on November 19, 2009, in San Francisco.
- CGS receives funds from the United States Geological Survey (USGS) for its state geologic mapping program. Forty-four states compete for mapping funds, and CGS typically gets the largest amounts for its mapping programs.
- A new Engineering Geologist was hired for the Los Angeles office. This individual has significant experience and will be involved with an alluvial fan project for the Department of Water Resources.
- After 32 years of service, Susan Kohler will be retiring from the Mineral Resources Program.
- Senate Bill 113 set precedent by allowing the University of California at Berkeley stadium to be exempt from the Alquist-Priolo Earthquake Fault Zoning Act, despite discussions and recommendations set forth by CGS.
- CGS lost another \$391,000 from the general fund, but remains optimistic that such funds will be reinstated. Several programs will suffer including the active faulting, seismic hazards and mineral resources mapping programs.
- CGS is receiving eight visitors from Singapore to tour CGS's Strong Motion Instrumentation Program.

IV. Chairman's Report (Garner) [Information]

No report provided.

V. Executive Officer's Report (Testa) [Information]

Executive Officer Stephen Testa summarized the following recent and upcoming activities of the SMGB:

- Ten Low Gross Exemptions appeals were received. Of this total, seven were denied, and the remaining three were retracted by OMR.
- An Amended Reclamation Plan for the Richmond Quarry, located in the City of Richmond, was received and is under review. The SMGB serves as a SMARA lead agency for the City of Richmond.
- Public complaints alleging certain lead agencies not fulfilling their responsibilities and obligations under SMARA have been received. Complaints toward Marin County, Ventura



County and the City of Lake Elsinore are currently under review. Complaints toward Siskiyou County continue to be received.

- Four designation considerations are in progress: rulemaking for termination of designation of certain sectors in the Claremont-Upland Production-Consumption (P-C) Region, addressing comments submitted for the Palm Springs P-C Region, and scheduling of public hearings to receive stakeholder comments on proposed designated sectors within the Bakersfield and San Bernardino P-C Regions.
- For those jurisdictions where the SMGB serves as a SMARA led agency, about one-third of the surface mine inspections for 2009 have been completed to date.
- The SMGB's annual report is due to the legislature by end of year. A draft report is anticipated to be completed by December, and will cover from mid-2000 to present.

V. Ex-Parte Communication Disclosure [Information]

[Board Members will identify any discussions they may have had requiring disclosure pursuant to Public Resources Code Sections 663.1 and 663.2.]

- Member Bly-Chester mentioned a non-ex parte discussion with Jim Good, attorney, regarding the when Bly-Chester's term would be ending, and expressed his support for her re-appointment.

VII. Good of the Meeting [Information]

[This time is scheduled to provide the public with an opportunity to address non-agenda items. Those wishing to speak should do so at this time. All persons wishing to address the SMGB should fill out a speaker card and present it to the Secretary so that the Chair can determine the number of persons who wish to speak. Speakers are limited to three minutes except by special consent of the Chairman.]

- Charlotte Borgman, with C. Morrison Ranch and property owner adjacent to the SAFCA Howsley Road Borrow Site, Sutter County, expressed her concerns over the exemption being granted by the County, and lack of compliance by the contractor to fulfill commitments set forth by the County. Chairman Garner recommended that Ms. Borgman contact the SMGB's Executive Officer, whereas, the Executive Officer can assist in determining any jurisdictional issues, since this matter may be within the authority of the lead agency, that being the County.
- Phil Morrison, adjacent land owner, reiterated concerns expressed by Ms. Borgman.
- Art Marinaccio, consultant, El Dorado County, expressed concerns pertaining to Weber Creek Quarry, located in El Dorado County, and that the operator, Mr. Brunius, should be allowed to remove stockpiled materials, at minimum, at this time.

VIII. Consent Items [Action]

[All the items appearing under this section will be acted upon by the SMGB by one motion and without discussion; however, any Board member wishing to discuss a particular item may request the Chairman to remove the item from the Consent Calendar and consider it separately under Continued Business or New Business.]

1. Approval of Minutes, July 9, 2009, Regular Business Meeting.
2. Approval of Minutes, September 11, 2009, Regular Business Meeting.
3. Approval of Minutes, October 8, 2009, Regular Business Meeting.



4. Recognition of Revised Mineral Resources Management Policies (MRMP) for the County of Mendocino, Pursuant to Public Resources Code Section 2762.

Board Member Bly-Chester moved to approve Agenda Items 2, 3 and 4 (conformed minutes for September 11, 2009, and October 8, 2009, and to recognize the revised MRMP for the County of Mendocino). Board Member Lund seconded and the motion carried with a unanimous voice vote.

Board Member Brian Baca moved to conditionally approve Agenda Item 1 (conformed minutes for July 9), reflecting his opposition to approval of Alternative 5 for the Richmond Quarry). Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote. Members Lane and Chairman Garner abstained.

IX. Continued Business [Action]

[These business items have been continued from a previous meeting/hearing.]

X. New Business [Action]

5. Acceptance of Recommendations for Designation of Mineral Lands for Aggregate Materials in the Bakersfield Production-Consumption Region, Kern County, California. Executive Officer Testa stated that at its October 8, 2009, regular business meeting, the SMGB accepted CGS Special Report 210 which updated information previously presented in an earlier classification report. The SMGB, pursuant to PRC Section 2790, may, by regulation and after a public hearing, adopt designation of specific geographical areas of statewide or regional significance and specify the boundaries thereof, and based on recommendations from the State Geologist and public input, prioritize areas to be classified and/or designated. The State Geologist has recommended 62 individual sectors or sub-sectors for designation consideration. This action would result in an increase to 20,193 acres, up from 19,491 acres, and contain 4.4 billion tons of PCC-grade aggregate resources, down from 5.3 billion tons. The SMGB is considering accepting the recommendations of the State Geologist, and directing the EO to schedule a public hearing for the Mineral and Geologic Resources Committee to receive comments.

- John Clinkenbeard, Supervising Engineering Geologist and Manager of CGS's Mineral Resources Program provided a summary of the Mineral Land Classification program in California.
- Lawrence Busch, Geologist with CGS, summarized CGS Special Report 210.

Board Member Baca moved to accept the designation recommendations. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

6. Consideration for Exemption from the Requirements of the Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) Pursuant to Section 2714(f) for the Natomas Urban Development Borrow Site, Sacramento County.

Executive Officer Testa stated that in late September, the SMGB received a request for a one-time exemption from SMARA for the Natomas Urban Development Borrow Site. The project is located approximately 2000 feet from the relocated Riverside Canal, and more than 85,000 cubic yards of materials are anticipated to be extracted from an approximately 20 acre site. The SMGB has considered and granted exemptions that exceeded the one acre in extent and 1,000 cubic yards (i.e., not necessarily a minor disturbance) in the past; however, the SMGB recently denied such a request from the Three Rivers Levee Improvement Authority for two borrow pits located in Yuba



County, that were physically separated from the defined project area. The operator is requesting a one-time exemption from SMARA. Based on the documents before the SMGB today, the SMGB can either grant or deny the request.

- Kristin Burford, legal counsel for SAFCA, summarized the project and SAFCA's desire for a one-time exemption from SMARA, and the rationale for such request.
- Tim Washburn, Director of Planning, SAFCA, stated that the exemption request being made is simply a matter of efficiency, and that the effort to produce a reclamation plan would entail extra time and effort, although substantive issues have already been addressed.
- Member Bly-Chester inquired as to confirmation of the comment period.
- Member Baca stated that it is his understanding that a reclamation plan, haul plan, soil reestablishment plan and future cultural use plan, have been developed, and a reclamation plan could easily be prepared quickly and submitted for approval consideration. A similar case before the SMGB was considered, and although the project was able to move forward with most of the borrow sites deemed exempt from SMARA, two that were physically off site were not.
- Member Licari inquired as to the timelines, and whether stimulus monies are impacted. Tim Washburn stated that the federal government can not make direct contributions to this project, and work is planned to commence in 2010, though some uncertainty exists and a start-up of 2010 is uncertain.
- Member Bly-Chester recognized differences with this project noting there were other agencies overseeing the project, and such agencies would have direct access to recourse, and was comfortable with the roles being served by these other agencies, and stated that possibly SAFCA could offer or volunteer field reports to the SMGB.
- Member Lane stated all elements are there and there certainly is time to do prepare a reclamation plan.
- Member Baca concurred with Member Lane, with a large amount of the work already developed. He was not comfortable with granting the exemption even though the end use is tied to the construction project as mentioned by Kristen Burford.
- Member Lund concurred with Member Bly-Chester.
- Member Tepel concurred with comments made by Member Baca and Lane.
- Member Licari noted that he was in general agreement with comments made by Member Bly-Chester but with concerns should the project be delayed or run out of funds before completion.
- Member Baca added that all the CEQA documents are also in place.
- Richard Thalhammer, Deputy Attorney General and legal counsel to the SMGB, stated that the same CEQA issues remain regardless of the process. Also, should the SMGB grant an exemption, the SMGB would not have any authority or oversight of the project?
- Chairman Garner summarized the discussion and stated that he had not heard a convincing argument to grant the exemption. He noted that there are no public safety issues and there is considerable time to prepare and submit a reclamation plan and financial assurance.

Board Member Tepel moved to deny the exemption request. Board Member Baca seconded and the motion carried, with Members Bly-Chester and Lund opposed.



7. **Special Public Hearing:** Request for Determination for Vested Rights, Big Cut Mine (CA Mine ID #91-09-00XX), Diane Anderson (Agent), Rick Churches (Operator and Claimant), County of El Dorado.

Executive Officer Testa stated that the SMGB is the lead agency for El Dorado County, and on March 13, 2009, received the filing of the administrative record for the conduct of a vested rights determination for the proposed Big Cut Mine surface mining operation located in the County. The filing included an administrative record, affidavit and processing fee of \$5,000, pursuant to the SMGB's regulations (Article 15, Section 3954). The request for a vested rights determination was determined by the SMGB's Chairman to be within the jurisdiction of the SMGB on April 3, 2008. A mailing of the Notice of Pending Determination was published on May 15, 2009. At its May 14, 2009, regular business meeting, the SMGB reaffirmed that it would serve as the hearing officer. At its September 11, 2009, regular business meeting, a hearing date was set for November 12, 2009; however, this scheduled date did not allow for adequate time for public comment following issuance of a Further Public Notice of Determination (where a meeting location and time is required to be identified). The SMGB is considering continuing this hearing to allow for adequate time for public comment. The claimant has made a request for an April 8, 2009, meeting, assuming the claimant is allowed the opportunity to supplement the submittal. Should no supplement be allowed, a new request for determination would be required which would set the hearing date for some time mid-2010.

- Rick Thalhammer, Deputy Attorney General and the SMGB's legal counsel, stated that the SMGB's regulations need some attention and refinement. The issue before the SMGB is whether it wishes to allow for a supplemental submittal, or request an entirely new petition. Amendment of the SMGB's regulations would allow for the SMGB to control incoming information and allow adequate time for review, analysis and consideration.
- Member Tepel expressed concerns about the SMGB already having a packet for consideration.
- Diane Anderson, legal counsel for the proposed surface mining operation known as the Big Cut Mine, informed the SMGB that new information has been uncovered, and with the upcoming holidays, and supplement could not be provided until around January 7, 2010. Furthermore, the new information would be beneficial when the SMGB eventually considers this matter. On behalf of her client, the 180 days maximum period that a hearing must take place could be waived.
- Member Baca cautioned the SMGB not to take action that could be perceived as an underground regulation.
- Member Bly-Chester indicated that the SMGB has already set precedence in the Western Aggregate matter.
- Chairman Garner directed the Executive Officer to schedule discussion of amendments to the SMGB's vested rights regulations for the Policy and Legislation Committee.

Board Member Baca moved to allow for submittal of supplemental information by 5:00 P.M.,



January 7, 2010, dissolve all claims to the state's timeline, and pay any additional costs or fees incurred in the review of the administrative record. Board Member Tepel seconded and the motion carried with a unanimous voice vote.

XI. Special Reports and Department Presentations [Possible Action]

[Based on these Reports, the Chair may instruct the SMGB staff to initiate administrative actions.

8. Report on California Geological Survey Special Report 211,
Radon Potential in the Lake Tahoe Area, California. (Information)

Executive Officer Testa noted that the California Geological Survey (CGS) recently published Special Report 211 titled "*Radon Potential in the Lake Tahoe Area, California.*" Radon is a radioactive gas formed by decay of small amounts of uranium and thorium naturally present in rock and soil. Radon gas can sometimes migrate from underlying soil and rock into houses and become concentrated in the indoor air. The United States Environmental Protection Agency recommended radon action level is 4 picocuries per liter (pCi/L). Between December 2006 and April 2007, an indoor-radon survey of 443 homes in the Lake Tahoe area using short-term charcoal detectors, was performed by the California Department of Public Health Radon Program (CDPH-Radon Program). A Radon Potential Zone Map for the Lake Tahoe Area was subsequently prepared by CGS as part of an inter-agency agreement. The summary report being provided is by CGS for the SMGB's information, and no recommendations were being offered.

- Dr. Ronald Churchill, CGS Geologist, summarized CGS Special Report 211.
- Vice-Chair Bly-Chester requested that the Executive Officer schedule this issue for an upcoming Geohazards Committee meeting, to discuss public outreach and possible funding for more detailed and publicly available mapping.

9. Inspection reports pursuant to PRC Section 2772(b) for the following surface mining operations may be presented for SMGB acceptance consideration as being in accordance with the SMGB's requirements:

- Bear Creek Quarry (CA Mine ID #91-09-0001), El Dorado County.
- Cool Cave Quarry (CA Mine ID #91-09-0005), El Dorado County.
- Timm Mine (CA Mine ID #91-09-0006), El Dorado County.
- Somerset Sand Mine (CA Mine ID #91-09-0009), El Dorado County.
- Snows Road Quarry (CA Mine ID #91-09-0012), El Dorado County.
- Marin Quarry (CA Mine ID #91-09-0015), El Dorado County.

Executive Officer Testa stated that the SMGB serves as the lead agency under SMARA for two counties, nine cities, and the Bay Conservation and Development Commission (BCDC). About 14 out of 32 surface mines have been completed to date, excluding the 8 BCDC sites. Six SMARA mine inspection reports are being presented today for acceptance consideration by the SMGB, and acknowledgement that the reports have been prepared in accordance with the regulatory requirements of SMARA and the SMGB's guidelines.

- Will Arcand, Senior Engineering Geologist with the SMGB, presented a summary of each inspection report.



Board Member Tepel moved to accept the inspection reports. Board Member Bly-Chester seconded and the motion carried with a unanimous voice vote.

XII. SMGB Committee Reports [Information and Possible Action]

- Geohazards Committee (Chairperson Bly-Chester)
 - Alquist-Priolo Technical Advisory Committee (Chairperson Tepel)
 - No report provided.
- Surface Mining and Standards Committee (Chairperson Lund)
 - No report provided.
- Minerals and Geologic Resources Committee (Chairperson Tepel)
 - No report provided.
- Policy and Legislation Committee (Chairperson Baca)
 - No written report provided. Committee Chairman Baca stated that the Committee met earlier this morning, and discussed issues related to the submittal of documents to the SMGB for items on the SMGB's agenda, and that the Executive Officer will provide draft language for consideration, at the next scheduled meeting of the Committee.

XIII. Continuing Business [Information]

[This item is provided as an opportunity for any SMGB member to receive information on or any items of continuing interest to the SMGB.]

No continued business items were discussed.

XIV. New Business [Information]

[This item is provided as an opportunity for any SMGB member to bring any item of new business to the SMGB's attention for further discussion and further action.] Items to be discussed:

No new business discussed.

XV. Executive Session (Closed to the Public) [Possible Action]

[The SMGB will discuss information from its legal counsel on pending litigation and may take appropriate actions based on this information. This session is being held under Government Code, Section 11126.] Items to be discussed:

- a). Brunius vs. SMGB, Case # PC 20010449, El Dorado County Superior Court.
- b). Kibbe Area Planning and Protection Association; Forest Tull vs. SMGB; A. Teichert & Sons, Inc.; and DOES 1010, Case No. 34-2007-00882657-CU-WM-GOS, Sacramento County Superior Court.
- c). An un-named case where there is potentially significant exposure to litigation against the Board.

Re-open Regular Business Session, Announce Results of Executive Session

SMGB's Legal Counsel, Mr. Richard Thalhammer, Deputy Attorney General, announced that the SMGB met in closed session to discuss pending litigation but the SMGB took no actions.

XVI. Announcements of Future Meetings

December 10, 2009, was announced as the next meeting, and the City of Riverside as the location.



XVII. Adjournment

The meeting was adjourned at 1:00 P.M.

APPROVED

Erin Garner, Chairman

Stephen M. Testa, Executive Officer

